

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD 1
REGION 20

WESTERN AGGREGATES, LLC

Employer

and

Case 20-RD-2417

KEVIN BARNETT

Petitioner

and

OPERATING ENGINEERS LOCAL UNION NO. 3,
INTERNATIONAL UNION OF OPERATING ENGINEERS

Union

SECOND SUPPLEMENTAL DECISION AND NOTICE OF HEARING

On September 2, 2005, the Acting Regional Director directed an election that was conducted by secret ballot on September 29, 2005, in the following appropriate collective bargaining unit:

All full-time and regular part-time plant operators, mechanics, equipment operators,
laboratory testers and laborers employed by the Employer at its Marysville, California facility;
excluding office clerical employees, weighmaster, sales employees, professional employees,
managers, guards and supervisors as defined in the Act.

The Tally of Ballots served upon the parties at the conclusion of the election shows:

Approximate number of eligible voters	15
Number of Void ballots	0
Number of Votes cast for labor organization	0
Number of Votes cast against labor organization	12
Number of Valid votes counted	12
Number of Challenged ballots .0 Number of Valid votes counted plus challenged ballots	12

¹ Also referred to as the Board.

On October 6, 2005, the Union timely filed and served upon the Employer and Petitioner objections to the conduct of the election which state verbatim:

1. The Employer made promises of benefits and other improvements in wages, hours and working conditions or gave such improvements.
2. The Employer refused to bargain in good faith.
3. The Employer maintained unlawful rules.
4. The Employer failed to provide an adequate Excelsior list.
5. The Employer threatened and coerced employees in the exercise of rights guaranteed by Section 7.

On January 20, 2006, I issued a Supplemental Decision in which I overruled all of the Union's Objections. The Union excepted. The Board concluded that the possible issue of fact regarding Objection 1 warranted a hearing, and by Order dated March 8, 2006, remanded the matter to me for that purpose.

Objection No. 1

The Union asserted in support of this objection of promises and improvements that two different Plant Managers told employees that they would get a raise if they decertified the Union.

The Union submitted an employee's statement in support of one incident, a conversation between one employee and the former Plant Manager that allegedly occurred on about January 29, 2005, well in advance of the critical period that commenced with the filing of the Petition on April 11 that year.

In support of the more recent alleged incident(s), the Union named witnesses who it claimed would testify that in about May 2005, the current Plant Manager told a meeting attended by most employees that they would get a raise if they decertified the Union. A single employee provided evidence that during at least two meetings, on unspecified dates, with (he guessed) three to four employees in attendance, the Plant Manager stated that the terms that the Employer had offered to the Union were "still out there and if the(y) decide to reject the Union the company would implement the offer." On the other hand, eleven employees offered evidence that they had never heard the Employer provide any assurance that it would implement its offer if employees decertified the Union. The Board has concluded that the issue

posed by this conflicting testimony raises a substantial and material issue of fact that must be resolved by means of a hearing. Accordingly,

I HEREBY ORDER that a hearing commence at 9:00 a.m. on May 9, 2006 and continue on consecutive days thereafter as appropriate, in a place to be determined in Yuba City or Marysville, California, at which time the Parties will have the right to appear in person, or otherwise, to give testimony and to examine and cross-examine witnesses with respect to the issues raised by the portion of Objection 1 that alleges that the Employer “made promises of benefits and other improvements in wages, hours and working conditions.”²

I HEREBY REQUEST that the Administrative Law Judge designated for the purpose of conducting the hearing prepare and cause to be served on the Parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the Objections. Within fourteen (14) days from the issuance of such report, any Party may file with the Board in Washington, D.C., eight (8) copies of exceptions to the report with supporting brief, if desired. Immediately upon the filing of exceptions, the filing Party shall serve a copy thereof, together with a copy of any brief filed, on the other Party, the Administrative Law Judge, and the Regional Director, and shall provide a statement of service to the Board. If no Party timely files exceptions to the report, the Board may decide the matter forthwith upon the record or may make other disposition of the case.

DATED AT San Francisco, California, this 14th day of March 2006.

/s/ Joseph P. Norelli
Joseph P. Norelli, Regional Director National
Labor Relations Board, Region 20 901 Market
Street, Suite 400 San Francisco, California
94103

² In Objection 1, the Union also alleged disjunctively that the Employer “gave such improvements.” As noted in my Supplemental Decision, the sole support for the actual grant of benefits that the Union provided was an announcement dated June 2005 of an “Employee Appreciation BBQ” with a blank signup sheet. I concluded that the picnic refreshments and tickets to a semi-pro baseball game that the Employer apparently provided about two months in advance of the election did not constitute a benefit that interfered with a fair vote. The Union did not contest that finding in its exceptions, and I do not believe that the Board perceived it to implicate any issue of fact. Accordingly, I am not setting for hearing the portion of Objection 1 that alleged the actual grant, as opposed to the promise, of improvements.